

## PATENT COOPERATION TREATY

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## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 26086 WO	<b>FOR FURTHER ACTION</b>	
	See Form PCT/IPEA/416	
International application No. PCT/EP2005/002066	International filing date (day/month/year) 26.02.2005	Priority date (day/month/year) 26.02.2004
International Patent Classification (IPC) or national classification and IPC INV. C12N15/10 C12N1/20		
Applicant MIXIS FRANCE S.A. et al.		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 9 sheets, as follows:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</li> <li><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</li> </ul> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>	
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Box No. I Basis of the report</li> <li><input type="checkbox"/> Box No. II Priority</li> <li><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li><input type="checkbox"/> Box No. IV Lack of unity of invention</li> <li><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li><input type="checkbox"/> Box No. VI Certain documents cited</li> <li><input type="checkbox"/> Box No. VII Certain defects in the international application</li> <li><input type="checkbox"/> Box No. VIII Certain observations on the international application</li> </ul>	

Date of submission of the demand 01.12.2005	Date of completion of this report 04.04.2006
Name and mailing address of the international preliminary examining authority: European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized officer Aslund, J Telephone No. +31 70 340-4393



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2005/002066

**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on

- the international application in the language in which it was filed
- a translation of the international application into , which is the language of a translation furnished for the purposes of:
  - international search (under Rules 12.3(a) and 23.1(b))
  - publication of the international application (under Rule 12.4(a))
  - international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

**Description, Pages**

1-59 as originally filed

**Claims, Numbers**

1-48 received on 27.02.2006 with letter of 23.02.2006

**Drawings, Sheets**

19-99 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3.  The amendments have resulted in the cancellation of:

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2005/002066

**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-48
	No: Claims	
Inventive step (IS)	Yes: Claims	1-48
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-48
	No: Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

**Supplemental Box relating to Sequence Listing**

**Continuation of Box I, item 2:**

1. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this report was established on the basis of:
  - a. type of material:
    - a sequence listing
    - table(s) related to the sequence listing
  - b. format of material:
    - on paper
    - in electronic form
  - c. time of filing/furnishing:
    - contained in the international application as filed
    - filed together with the international application in electronic form
    - furnished subsequently to this Authority for the purposes of search and/or examination
    - received by this Authority as an amendment\* on
2.  In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
3. Additional comments:

\* *If item 4 in Box No. I applies, the listing and/or table(s) related thereto, which form part of the basis of the report, may be marked "superseded."*

**Re Item V.**

Reference is made to the following documents:

D7: Zhang et al (1998) Nature Genetics VOL 20, 123-128

**Novelty and Inventive step**

-The closest state of the art D7 (Fig 1) discloses recombination between (a non-replicative and extrachromosomal) linear fragment carrying a resistance marker and a plasmid in a strain overexpressing endogenous recombinases. This results in the formation of hybrid molecules which can be selected for using said marker.

-Claim 1 has been amended to specify extrachromosomal DNA elements and the formation of a cointegrate or hybrid between the two elements in a host cell with an impaired mismatch repair system.

-The problem to be solved can therefore be considered as alternative methods for homologous recombination between extrachromosomal DNA molecules.

-The proposed solution is the use of host cells with impaired mismatch repair system.

-The prior art has mainly focussed on increasing recombination by enhancing the recombinase activity of the host cell. The solution proposed in the present application has not been suggested in the prior art. Hence an inventive step is acknowledged.